



California Regional Water Quality Control Board San Diego Region



Over 50 Years Serving San Diego, Orange, and Riverside Counties

Recipient of the 2004 Environmental Award for Outstanding Achievement from USEPA

9174 Sky Park Court, Suite 100, San Diego, California 92123-4353

(858) 467-2952 • Fax (858) 571-6972

[http:// www.waterboards.ca.gov/sandiego](http://www.waterboards.ca.gov/sandiego)

Linda S. Adams
Secretary for
Environmental Protection

Edmund G. Brown, Jr.
Governor

January 25, 2011

Certified Mail – Return Receipt Requested
Article Number: 7010 1060 0000 4952 7822

Mr. William T. Ostrem
President
Black Mountain Ranch, LLC
16010 Camino del Sur
San Diego, CA 92127

In reply refer to:
CIWQS Place ID: 9 37C328390: carias

Dear Mr. Ostrem:

**Subject: Notice of Violation No. R9-2011-0025 and Water Code Section 13267
Technical Report, Del Sur/Unit 14 Construction Site**

Enclosed is Notice of Violation (NOV) No. R9-2011-0025 issued to Black Mountain Ranch, LLC, for violations of Order No. 2009-0009-DWQ, issued by the State Water Resources Control Board and enforced by the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board). As described in the NOV, the violations are subject to further enforcement pursuant to the California Water Code. The San Diego Water Board reserves the right to take any enforcement action authorized by law.

Water Code Section 13267¹ Technical Reports Are Required by February 25, 2011 and June 30, 2011

Pursuant to Water Code section 13267, **you are hereby required to provide a Technical Report by February 25, 2011** that includes the following information:

1. A description of the measures taken to prevent additional illegal discharges of sediment laden water into Lusardi Creek.
2. A description of how the violations noted in NOV No. R9-2011-0025 and the Facility Inspection Report dated December 22, 2010 have been corrected, including photo-documentation of the additional best management practices (BMPs) implemented at the site. In addition, please describe any changes made to the site's Storm Water Pollution Prevention Plan.

¹ Water Code section 13267, subdivision (b), allows the Water Boards to conduct investigations and to require technical or monitoring reports from any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste in accordance with the conditions in the section.

3. A Risk Determination Analysis as described in section VIII of Order No. 2009-0009-DWQ. Requirements of the updated Risk Level shall be effective immediately upon completion.

Because the enclosed Facility Inspection Report dated December 22, 2010 shows evidence of impacts to Waters of the U.S., you are required to submit bioassessment monitoring to determine the extent of the impacts and water quality monitoring to assess the effectiveness of BMPs utilized at the site. Pursuant to Water Code section 13267, **you are hereby required to provide a Technical Report by June 30, 2011** that includes the following information:

Bioassessment Monitoring

1. Benthic macroinvertebrate bioassessment monitoring, including physical habitat assessment, demonstrating the extent of impacts to the WARM and WILD beneficial uses of Lusardi Creek caused by the illegal discharge occurring on December 22, 2010.
2. Sampling shall take place at not less than four locations within Lusardi Creek in order to gain information regarding the spatial extent of impacts:
 - a. One location upstream of the discharge point identified in Figure 8 of the Facility Inspection Report dated December 22, 2010 (discharge point);
 - b. One location at the discharge point;
 - c. Two locations downstream of the discharge point. These two sampling points should be placed to provide information regarding the extent of the impacts resulting from the sediment discharge occurring on December 22, 2010;
 - d. Field, laboratory, and assessment methods shall conform to guidelines specified in Appendix 3 of Order No. 2009-0009-DWQ;
 - e. All measurements must be Surface Waters Ambient Monitoring Program (SWAMP) compatible.

Effluent and Receiving Water Monitoring

3. For each qualifying rain event² for the duration of coverage under Order No. 2009-0009-DWQ, Black Mountain Ranch, LLC shall provide effluent and receiving water quality monitoring for the Del Sur/Unit 14 site. Data shall be provided in the Technical Report due June 30, 2011, and in each annual report due September 1 thereafter.

² A rain event producing precipitation of ½ inch or more at the time of discharge.

4. Black Mountain Ranch, LLC shall provide effluent and receiving water quality monitoring (pH and turbidity) as described in Attachment E of Order No. 2009-0009-DWQ.

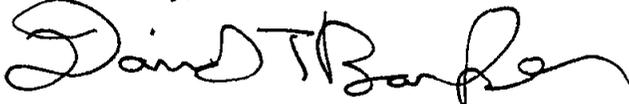
The violations documented in the attached NOV and Facility Inspection Report dated December 22, 2010 support the requirement to provide the technical reports. The reports are necessary for the San Diego Water Board to determine the state of compliance with Order No. 2009-0009-DWQ. The reports are also necessary to determine the potential or actual harm to human health or the environment from non-compliance. The burden, including costs of the reports, bears a reasonable relationship to the need for the reports and the benefits to be obtained from them.

Failure to comply with requirements made pursuant to Water Code section 13267, subdivision (b), may result in administrative civil liability pursuant to Water Code section 13268 up to \$1,000 per day.

In making the determination of whether and how to proceed with further enforcement action, the San Diego Water Board will consider both the time it takes to correct the identified violations and the sufficiency of the corrections.

In the subject line of any response, please include the requested **"In reply refer to:"** information located in the heading of this letter. For questions pertaining to the subject matter, please contact Christina Arias at (858) 627-3931 or carias@waterboards.ca.gov.

Respectfully,



DAVID T. BARKER, P.E.
Supervising Water Resource Control Engineer
Surface Waters Basins Branch

Signed under the authority delegated by the Executive Officer

DTB:esb:cma

Enclosures:

1. Notice of Violation No. R9-2011-0025
2. Facility Inspection Report Dated December 22, 2010.

Cc via email: (w/encl.)

Kurt Bruskotter, Black Mountain Ranch, LLC

Joan Brackin, City of San Diego

SMARTS Entries:

SMARTS Entries:	Tech Staff Info & Use
Place/WDID	9 37C328390
Enf ID	403643
NPDES No.	CAS000002
Violation ID	843117



California Regional Water Quality Control Board

San Diego Region



Over 50 Years Serving San Diego, Orange, and Riverside Counties

Recipient of the 2004 Environmental Award for Outstanding Achievement from USEPA

Linda S. Adams
Secretary for
Environmental Protection

Edmund G. Brown, Jr.
Governor

9174 Sky Park Court, Suite 100, San Diego, California 92123-4353
(858) 467-2952 • Fax (858) 571-6972
[http:// www.waterboards.ca.gov/sandiego](http://www.waterboards.ca.gov/sandiego)

Black Mountain Ranch LLC

Del Sur/Unit 14

WDID No.: 9 37C328390: carias

NOTICE OF VIOLATION

No. R9-2011-0025

Violations of Order No. 2009-0009-DWQ
January 25, 2011

BLACK MOUNTAIN RANCH LLC is hereby notified that the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) reserves the right to take any enforcement action authorized by law for the violations described herein.

BLACK MOUNTAIN RANCH LLC is in violation of State Water Resources Control Board Order No. 2009-0009-DWQ, NPDES No. CAS000002, *National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities*.

A. Summary of Violations

1. Failure to Comply with Discharge Prohibitions

- a. **Pursuant to Provision III A. of Order No. 2009-0009-DWQ:** Dischargers shall not violate any discharge prohibitions contained in applicable Basin Plans or statewide water quality control plans.
- b. **Pursuant to Provision III B. of Order No. 2009-0009-DWQ:** All discharges are prohibited except for the storm water and non-storm water discharge specifically authorized by this General Permit or another NPDES permit.
- c. **Observations:** On December 22, 2010, the San Diego Water Board inspected the Del Sur/Unit 14 construction site (WDID No. 9 37C328390) and found sediment-laden water being discharged from the construction site into Lusardi Creek, tributary to San Dieguito Creek and Lagoon. Photo-documentation and specific findings regarding this illegal discharge are discussed in the Facility Inspection Report dated December 22, 2010.

2. Failure to Adequately Implement Erosion Control Best Management Practices (BMPs)

- a. **Pursuant to Provision D.2. of Attachment C to Order No. 2009-0009-DWQ:** Risk Level 1 dischargers shall provide effective soil cover for inactive areas and all finished slopes, open space, utility backfill, and completed lots.

California Environmental Protection Agency

- b. **Observations:** During the December 22, 2010 inspection, the San Diego Water Board found no erosion control BMPs in place. Photo-documentation and specific findings are discussed in the Facility Inspection Report dated December 22, 2010.

3. Failure to Adequately Implement Sediment Control BMPs

- a. **Pursuant to Provision E.1 of Attachment C to Order No. 2009-0009-DWQ:** Risk Level 1 dischargers shall establish and maintain effective perimeter controls and stabilize all construction entrances and exits to sufficiently control erosion and sediment discharges from the site.
- b. **Pursuant to Provision E.2 of Attachment C to Order No. 2009-0009-DWQ:** On sites where sediment basins are to be used, Risk Level 1 dischargers shall, at minimum, design sediment basins according to the method provided in California Storm Water Quality Association's (CASQA's) Construction BMP Guidance Handbook.
- c. **Observations:** During the December 22, 2010, inspection, the San Diego Water Board found that perimeter controls were ineffective. Additionally, according to the site's Storm Water Pollution Prevention Plan (SWPPP) dated June 30, 2010, BMPs included a sediment basin, yet a basin had not yet been completed at the time of the inspection. This contributed to a discharge of sediment into adjacent Lusardi Creek. Photo-documentation and specific findings are discussed in the Facility Inspection Report dated December 22, 2010.

4. Failure to Adequately Implement Run-on and Runoff Controls

- a. **Pursuant to Provision F of Attachment C to Order No. 2009-0009-DWQ:** Risk Level 1 dischargers shall effectively manage all run-on, all runoff within the site and all runoff that discharges off the site. Run-on from offsite shall be directed away from all disturbed areas or shall collectively be in compliance with the effluent limitation in this General Permit.
- b. **Observations:** During the December 22, 2010 inspection, the San Diego Water Board found that run-on from offsite flowed directly in contact with disturbed areas. This contributed to a discharge of sediment into adjacent Lusardi Creek. Photo-documentation and specific findings are discussed in the Facility Inspection Report dated December 22, 2010.

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD - SAN DIEGO REGION
WATERSHED PROTECTION PROGRAM

FACILITY INSPECTION REPORT

FACILITY: Del Sur/Unit 14 INSPECTION DATE/TIME: 12/22/2010; 1400

WDID/FILE NO.: 9 37C328390

REPRESENTATIVE(S) PRESENT DURING INSPECTION:

NAME: <u>Christina Arias</u>	AFFILIATION: <u>San Diego Water Board</u>
NAME: <u>Jody Ebsen</u>	AFFILIATION: <u>San Diego Water Board</u>
NAME: <u>Kurt Bruskotter</u>	AFFILIATION: <u>Black Mountain Ranch LLC</u>
NAME: _____	AFFILIATION: _____
NAME: _____	AFFILIATION: _____

Black Mountain Ranch LLC
NAME OF OWNER, AGENCY OR PARTY RESPONSIBLE FOR DISCHARGE

FACILITY OR DEVELOPER NAME (if different from owner)

16010 Camino del Sur, SD, CA 92127
OWNER MAILING ADDRESS

Camino del Sur and Del Sur Ct TB: 1169B5
FACILITY ADDRESS

Kurt Bruskotter (858) 792-7061
OWNER CONTACT NAME AND PHONE #

FACILITY OR DEVELOPER CONTACT NAME AND PHONE #

APPLICABLE WATER QUALITY LICENSING REQUIREMENTS:

- | | |
|---|---|
| <input type="checkbox"/> MS4 URBAN RUNOFF REQUIREMENTS | <input type="checkbox"/> GENERAL OR INDIVIDUAL WASTE DISCHARGE REQUIREMENTS OR NPDES |
| <input checked="" type="checkbox"/> CONSTRUCTION GENERAL PERMIT | <input type="checkbox"/> GENERAL OR INDIVIDUAL WAIVER OF WASTE DISCHARGE REQUIREMENTS |
| <input type="checkbox"/> CALTRANS GENERAL PERMIT | <input type="checkbox"/> SECTION 401 WATER QUALITY CERTIFICATION |
| <input type="checkbox"/> INDUSTRIAL GENERAL PERMIT | <input type="checkbox"/> CWC SECTION 13264 |

INSPECTION TYPE (Check One):

- "A" TYPE COMPLIANCE--COMPREHENSIVE INSPECTION IN WHICH SAMPLES ARE TAKEN. (EPA TYPE S)
- "B" TYPE COMPLIANCE--A ROUTINE NONSAMPLING INSPECTION. (EPA TYPE C)
- NONCOMPLIANCE FOLLOW-UP--INSPECTION MADE TO VERIFY CORRECTION OF A PREVIOUSLY IDENTIFIED VIOLATION.
- ENFORCEMENT FOLLOW-UP--INSPECTION MADE TO VERIFY THAT CONDITIONS OF AN ENFORCEMENT ACTION ARE BEING MET.
- COMPLAINT--INSPECTION MADE IN RESPONSE TO A COMPLAINT.
- PRE-REQUIREMENT--INSPECTION MADE TO GATHER INFO. RELATIVE TO PREPARING, MODIFYING, OR RESCINDING REQUIREMENTS.
- NO EXPOSURE CERTIFICATION (NEC) - VERIFICATION THAT THERE IS NO EXPOSURE OF INDUSTRIAL ACTIVITIES TO STORM WATER.
- NOTICE OF TERMINATION REQUEST FOR INDUSTRIAL FACILITIES OR CONSTRUCTION SITES - VERIFICATION THAT THE FACILITY OR CONSTRUCTION SITE IS NOT SUBJECT TO PERMIT REQUIREMENTS.
- COMPLIANCE ASSISTANCE INSPECTION - OUTREACH INSPECTION DUE TO DISCHARGER'S REQUEST FOR COMPLIANCE ASSISTANCE.

INSPECTION FINDINGS:

Y WERE VIOLATIONS NOTED DURING THIS INSPECTION? (YES/NO/PENDING SAMPLE RESULTS)

Facility: Del Sur Unit 14
Inspection Date: 12/22/2010

I. COMPLIANCE HISTORY / PURPOSE OF INSPECTION

On December 22, 2010, Christina Arias and Jody Ebsen of the San Diego Water Board performed a routine inspection of the Del Sur Unit 14 construction site. This site is part of a master development of residential and commercial buildings known as Black Mountain Ranch, roughly 1,500 acres in size, and under construction since June 2004. This site is located in the Rancho Santa Fe area of the City of San Diego, west of I-15 and abuts Lusardi Creek to the south. Photos of the site are attached and identified as Figures 1-9.

Rain gauges onsite recorded approximately 6 inches of rain from this series of storms, which spanned several days, at the time of inspection (according to Mr. Bruskotter). The NOAA rain gauge at Poway recorded 6.37 inches of rain between 12/16/10 and 12/22/10.

II. FINDINGS

1. This phase of development is known as Del Sur Unit 14. This site is approximately 30 acres in size, all of which is in the rough grading stage. A berm was being constructed at the site perimeter to temporarily detain the storm water. At the time of inspection, permanent detention basins had not been completed.
2. A silt fence was placed around the perimeter of the construction site. No erosion control BMPs were identified.
3. Newly finished houses are located upstream of this site and contributed storm water run-on to this construction area. This area has a gradual slope towards Lusardi Creek, which is tributary to San Dieguito River and lagoon.
4. The berm at the perimeter that was used to temporarily detain the storm water was overwhelmed by recent storms. Sediment-laden storm water breached the berm in at least two places and entered Lusardi Creek (Figures 4-9).
5. The discharger placed visqueen at the locations of both breaches in order to prevent the berm from further eroding, but was ineffective.

III. RECOMMENDATIONS AND ADDITIONAL COMMENTS

1. Given the size of the construction site, volume of disturbed sediment, and proximity to Lusardi Creek, the site lacks adequate sediment and erosion control BMPs.
2. Sediment control basins can be used provided they are designed with adequate capacity to capture and treat sediment-laden storm water generated from the site. Implementation of sediment basins should have been done at the onset of rough grading, as described in the SWPPP Site Maps (see Exhibit Showing

Facility: Del Sur Unit 14
 Inspection Date: 12/22/2010

Temporary BMPs for "Grading and Land Development Phase" for Black Mountain Ranch North Village Unit 14, dated June 30, 2010.

3. Run-on from upstream development contributed to the breach. BMPs should be implemented to accommodate run-on volume and prevent erosion on the site.
4. Page 24 of the SWPPP states that there is no anticipated run-on to the project; therefore, no measures are applicable. The discharger must amend the SWPPP to add in proper measures to accommodate run-on because run-on was a major factor in the illegal discharge.
5. Erosion control BMPs should be implemented at the site including on all slopes.
6. These findings will be used to evaluate compliance with Order No. 2009-0009-DWQ.
7. This site is considered Risk Level 1 because it was an existing project under Order No. 99-08-DWQ. The Risk Level should be re-evaluated given the potential for discharges and negative impacts to the adjacent creek.

IV. SIGNATURE SECTION

Christina Arias
 STAFF INSPECTOR

SIGNATURE

INSPECTION DATE

Eric Becker
 REVIEWED BY SUPERVISOR

SIGNATURE

DATE

SMARTS:

Tech Staff Info & Use	
Application ID.	
WDID	9 37C328390
Inspection ID	2009852
Violation ID	843117

Facility: Del Sur Unit 14
Inspection Date: 12/22/2010



Sites of two recent breaches

Figure 1. Construction site; looking south at Lusardi Creek



Berm that will eventually used as permanent storm water detention feature

Figure 2. Construction site; looking east from Camino del Sur

Facility: Del Sur Unit 14
Inspection Date: 12/22/2010



Storm water detention basin used to detain offsite run on from upstream development

Figure 3. Construction site looking northeast



Note slopes have no erosion control

Figure 4. Berm used to detain storm water

Facility: Del Sur Unit 14
Inspection Date: 12/22/2010



Figure 5. Construction site looking upstream from location of breach



Sediment from
construction site has
entered Lusardi Creek

Figure 6. Foot of berm

Facility: Del Sur Unit 14
Inspection Date: 12/22/2010

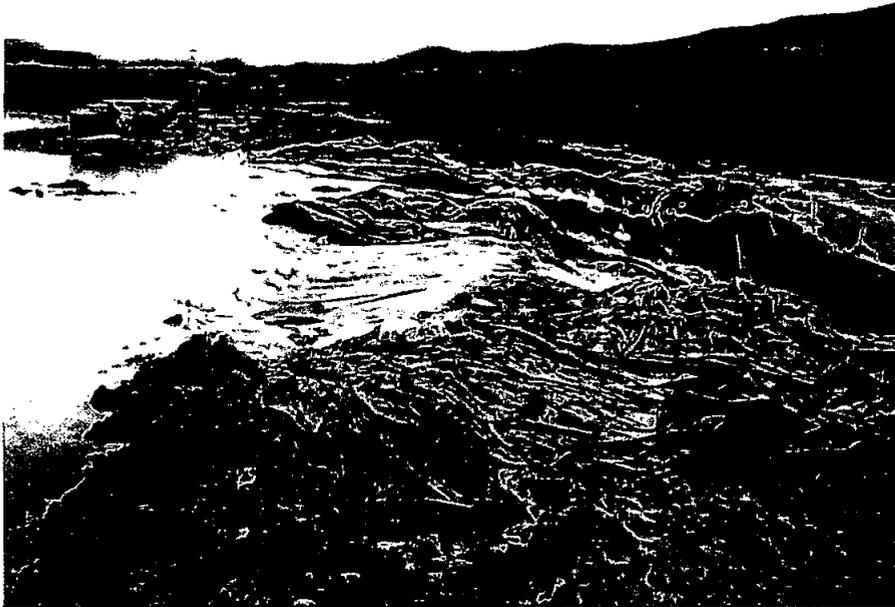


Figure 7. Location of second breach



Note discoloration of storm water from site mixing with creek

Figure 8. Construction site discharge entering Lusardi Creek

Facility: Del Sur Unit 14
Inspection Date: 12/22/2010



Note silt fences are underwater.

Figure 9. Construction site discharge entering Lusardi Creek

SENDER: COMPLETE THIS SECTION

Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits.

Article Addressed to:

William T. Ostrem
President
Black Mtn Ranch, LLC
16010 Camino del Sur
San Diego, CA 92127

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

Agent
 Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? Yes
If YES, enter delivery address below: No

3. Service Type

Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

Article Number
(Transfer from service label)

7010 1060 0000 4952 7822

PS Form 3811, February 2004

1-25

Domestic Return Receipt

C. Arias

102595-02-M-1540

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT OF THE RETURN ADDRESS. FOLD AT DOTTED LINE.
CERTIFIED MAIL™



7010 1060 0000 4952 7822

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$6.65

Postmark Here

Sent To William Ostrem/Black Mtn Ranch
Street, Apt. No., or PO Box No. 16010 Camino del Sur
City, State, ZIP+4 San Diego CA 92127

PS Form 3890, August 2005

See Reverse for Instructions